

RECORDATION NO. **18779** 1425

APR 22 1994 - 9 23 AM

INTERSTATE COMMERCE COMMISSION

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April 22, 1994

New Recordation No.

LICENSING BRANCH

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Dear Mr. Strickland:

On behalf of Industrial Investment Corporation, I submit for filing and recording under 49 U.S.C. § 11303(a) and the regulations promulgated thereunder, executed counterparts of a primary document, not previously recorded, entitled Railroad Equipment Lease ("Lease"), dated as of April 1, 1994.

The parties to the enclosed Lease are:

Industrial Investment Corporation — LESSOR
P.O. Box 706
Galion, Ohio 44833

Atlantic & Western Railway, Limited Partnership — LESSEE
Suite 302
100 Professional Park
Carrolton, GA 30117

The said Lease, among other things acts to lease the equipment listed in the Schedule thereto by the Lessor to the Lessee.

The equipment covered by the instant Lease is as identified in the Schedule thereto.

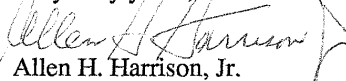
A short summary of the Lease to appear in the ICC Index is as follows:

"Covers 40 boxcars, CSXT 134215-134254."

Enclosed is a check in the amount of eighteen dollars (\$18.00) in payment of the filing fee.

Once the filing has been made, please return to bearer the stamped counterpart(s) of the document not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,


Allen H. Harrison, Jr.
Attorney for Industrial Investment Corporation
for the purpose of this filing.

Honorable Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423
Enclosures
BY HAND

8376 -020

counterparts


18779

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INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

THIS CAR LEASE (Lease) dated and effective as of April 1, 1994, is by and between INDUSTRIAL INVESTMENT CORPORATION (IIC) and ATLANTIC & WESTERN RAILWAY, LIMITED PARTNERSHIP (ATW).

1. Capitalization and Titles. Capitalized words are used herein for the convenience of the parties. The specific definitions or uses of such words are contained in the body of the Lease. All titles to the paragraphs are for the information and convenience of the parties and are not substantive.

2. Cars. IIC agrees to furnish, and ATW agrees to accept, as provided in this paragraph and subject to the provisions of this Lease, forty (40) "seventy ton" plug door boxcars with belt rails and 15 inch end of car cushioning (the "Cars"). Only Cars that are accepted by ATW are subject to this Lease. CSX Transportation, Inc. (CSX) will sublease (ATW/CSX Lease) these Cars from ATW. Any Car accepted by CSX under said sublease shall be deemed accepted by ATW under this Lease. A complete list of all accepted Cars will be attached as Schedule A.

3. Term. The initial term of this Lease is three (3) years, beginning April 1, 1994, or the date of acceptance for Cars that are accepted, and continuing through March 31, 1997. Thereafter, ATW may renew the term for up to two (2) additional terms of one (1) year each, provided that notice of renewal is extended to IIC not later than ninety (90) days prior to the end of the then current term. It is anticipated that under the ATW/CSX Lease, CSX will have an option of reducing the number of Cars in that sublease by ten percent (10%) on April 1 of each year of the sublease, beginning April 1, 1995, by giving ATW notification at least sixty (60) days' prior notice to each anniversary date. If, but only if, CSX exercises said option on any given year, ATW has the same option with regard to this Lease. In the event there is such a reduction in the number of cars in the ATW/CSX Lease, and a resulting reduction in the number of Cars in this Lease, IIC agrees to immediately pay to Charter Financial, Inc., an amount equal to all sums due with respect to such Cars.

4. Transfer and Use. IIC agrees to deliver the Cars to ATW at Washington, Indiana. ATW agrees to return the Cars to IIC at interchange points on the lines of CSX as designated by IIC. ATW is solely responsible for all linehaul, switching and accessorial charges applicable to the movement of Cars to CSX' interchange point at the onset of the Lease, and IIC is responsible for all such charges after ATW has the Cars delivered to IIC's designated CSX' interchange points after the termination of the Lease. ATW is responsible for all charges incurred in returning the Cars to the designated interchange points. ATW agrees that in the ATW/CSX

Lease, a provision will be incorporated which states that CSX agrees to use the Cars exclusively in its own service and interchange service with other railroads, and shall have full authority to direct the movement of the Cars to any location in the continental United States, Mexico and Canada.

5. Rental. ATW shall pay IIC a rental of \$125.00 per Car per month for each Car accepted by ATW. Payments are due semi-annually in arrears on January 1 and July 1 of each year in the amount of \$750.00 per Car beginning July 1, 1994, for all Cars accepted on or prior to that date, or the actual date of acceptance, if later. If ATW exercises its right to renew this Lease for a fourth year, the Lease Rental shall increase to \$152.50 per Car per month, payable semi-annually in the amount of \$915.00 per Car. If ATW exercises its right to renew this Lease for a fifth year, the Lease Rental shall increase to \$203.44 per Car per month, payable semi-annually in the amount of \$1,220.64 per Car. If ATW does not exercise its right to renew the Lease for a fourth year, IIC shall pay to ATW the sum of \$400.00 per Car for each Car still active in the Lease at the end of the initial three (3) year Lease period. Rental shall cease and be prorated as of the date of withdrawal of any Car from this Lease pursuant to the Destruction of Car and Car Modification paragraphs.

6. Incorporation of Documents. Except as otherwise expressly provided herein, the parties agree to incorporate and be governed by the provisions of the Field Manual of the AAR Interchange Rules, AAR Circular No. OT-5 and 49 CFR Parts 215, 231 and 232, all as amended, supplemented or superseded throughout the term of this Lease.

7. Maintenance and Repair. The Cars are leased to ATW on a "net" basis. ATW shall cause CSX to perform all necessary maintenance and repairs to the cars during the Lease term without cost to IIC.

8. Inspection. Each of the Cars will be inspected by the parties at the beginning and ending of this Lease at times and locations as mutually agreed between the parties. The conditions of each Car will be noted on a joint inspection certificate (JIC). Should either party waive inspection, the records of the other party shall control. (A) All Cars must be delivered to ATW in the following condition: (1) empty, (2) in good operating status, (3) acceptable as being capable of immediate loading and transportation of the intended commodities, and (4) suitable for interchange in accordance with the interchange Rules of the Association of American Railroads (AAR Rules). (B) All Cars will be returned in interchange condition subject to reasonable wear and tear, possible cleaning and free of any damage due to

unfair usage, as contained in AAR Rule 95. (C) If a Car is in need of repair prior to acceptance for delivery or return, a separate joint inspection will be held after the repairs have been made. Should either party waive inspection, the records of the other party will control regarding the condition of the Car on that date.

9. Car Hire Charges. ATW or CSX shall collect and retain the car hire charges (time and mileage) earned by the Cars, subject to all applicable tariffs, circulars and contracts.

10. Destruction of Car: Any Car that is damaged or destroyed beyond economic repair will be deleted from this Agreement as of the date of destruction. If the damage or destruction occurred while on ATW's lines, ATW will pay IIC the amount due under the casualty schedule attached as an exhibit to this Lease. If the damage or destruction occurred while on another railroad's lines, IIC will seek payment from that railroad pursuant to AAR Interchange Rule 107. If payment is not received within six (6) months of the date of destruction, ATW will pay IIC the amount due under the casualty schedule. IIC and ATW will still pursue collection from the responsible railroad and ATW will receive credit for payments that are received, up to the casualty schedule amount. No replacement Car will be furnished unless agreed upon by both parties.

11. DISCLAIMER OF WARRANTIES. IIC, NOT BEING THE MANUFACTURER OF THE CARS, NOR THE MANUFACTURER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO ATW NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE. IIC HEREBY ACKNOWLEDGES THAT ANY MANUFACTURER'S AND/OR SELLER'S WARRANTIES ARE FOR THE BENEFIT OF BOTH IIC AND ATW.

12. Lettering. ATW, at its expense, shall apply its own reporting marks and number and AEI tags to all Cars that are accepted. If, as is anticipated, ATW subleases the Car to CSX, ATW shall insure that CSX, at its expense, shall apply its own reporting marks and numbers and AEI tags to all Cars that are accepted. IIC, at its expense, shall remove ATW's and/or CSX' reporting marks and numbers and AEI tags once this Lease has expired and after the Cars have been delivered to their ultimate destination.

13. Sublease. ATW may sublease the Cars to CSX, and said sublease shall contain the provision: "Lessee may sublease any of the Cars to any third party of its choosing. Notwithstanding any such

sublease, Lessee shall continue to remain liable to Lessor under all conditions and terms of this Lease and such sublease shall be subject and subordinate to this Lease. Except for the rights contained in this Lease, no right, title or interest in any of the Car shall vest in Lessee by reason of this Lease."

14. Default. If ATW shall fail to perform any of its obligations hereunder, IIC shall provide written notice to ATW, specifying the alleged failure. If such failure has not been substantially corrected within: (A) ten (10) days for payment of Rent or (B) forty-five (45) days for any other alleged failure, IIC, at its sole election, may terminate this Lease upon three (3) days written notice. Such termination will not relieve ATW of its obligation for the rental payment for such Cars nor relieve IIC of its obligation to mitigate any alleged damages resulting from such failure by ATW, including but not limited to all reasonable attempts to relet the Cars for the remaining term of this Lease.

15. Assignment of Lease. This Lease shall be assignable by IIC and by its assigns without the consent of ATW, but ATW shall not be obligated to any assignee of IIC except upon written notice of such assignment from IIC or such assignee. Notwithstanding anything to the contrary contained herein, the obligation of ATW to pay Rental to such assignee shall be absolute and unconditional and shall not be affected by any circumstances whatsoever and such payment shall be made without interruption or abatement notwithstanding any event or circumstance whatsoever, including, without limitation, the bankruptcy or insolvency of ATW or any disaffirmance of this Lease by or on behalf of ATW, and notwithstanding any defense, setoff, recoupment or counterclaim or any other right whatsoever, whether by reason of breach of this Lease or otherwise which ATW may now or hereafter have against IIC and whether any such event shall be by reason of any act or omission of IIC or otherwise (except as previously excluded in this paragraph); provided however, that nothing herein contained shall effect any right of ATW to enforce against IIC any claim which ATW may have against IIC in any manner other than by abatement, attachment, or recoupment or interference with, or set-off, counterclaim or defense against, the aforementioned payments to be made to such assignee. ATW's undertaking herein to pay the Rental to and to perform the other obligations of ATW hereunder for the benefit of an assignee of ATW shall constitute a direct, independent and unconditional obligation of ATW to said assignee. ATW also acknowledges and agrees that any assignee of IIC's interest in this Lease shall have the right to exercise all rights, privileges and remedies (either in its own name or in the

name of IIC) which by the terms of this Lease are permitted to be exercised by IIC.

16. Return Tender and Storage. ATW shall gather the Cars at the end of the term of this Lease and shall notify IIC that the Cars are available for inspection. The aforementioned notice shall: (A) constitute the return tender of the Cars; (B) terminate any rental payments; and (C) begin the storage period. ATW shall provide free storage for the Cars for up to sixty (60) days from the date of return tender, after which a charge of \$3.00 per Car per day shall apply until receipt of forwarding instructions from IIC. ATW shall not be responsible for loss or damage sustained to the Cars during the storage period, unless due to the sole negligence of ATW.

17. Taxes. ATW agrees to assume responsibility for and to pay any applicable sales, use or similar taxes resulting from the Lease or use of the Cars. ATW may protest or otherwise contest against the taxes for which it is responsible for payment to the taxing authority, and agrees to pay any penalty or interest, if unsuccessful. Notwithstanding any other provisions of this Lease, IIC is solely responsible for the payment of all income taxes assessed against it for any Rental payments or other income received or deductions taken by it in connection with this Lease.

18. Title, Possession and Assignment. IIC is aware of and acknowledges the importance of ATW's and CSX' right to sole possession and quiet enjoyment of the Cars for the entirety of this Lease. IIC represents: (A) that it is either the sole owner of the Cars or has the sole right and authority to lease the Cars as provided herein, (B) that ATW is entitled to receive all car hire charges and/or mileage allowance payments that accrue when such Cars are off the lines of ATW and (C) no other party has any rights that might affect ATW's rights to possession and peaceful enjoyment of the Cars under this Lease as long as ATW is in compliance with its obligations.

19. Car Modification. Should any Cars require modification pursuant to a regulation of the U. S. Department of Transportation or other agency having jurisdiction over the operation or use of the Cars, relative to ATW's or CSX' use of the Cars, IIC may elect to do either of the following: (A) permanently delete the affected Cars from this Lease upon ninety (90) days notice to ATW or (B) arrange to make the appropriate modifications at its expense. If the modifications are made at IIC's expense, the Term for the Cars will be extended, without additional rental, by the number of days that the Cars are out of ATW's service. If IIC elects option (A), ATW has forty-five (45) days from receipt of IIC's notice within which to notify

IIC that ATW will perform the appropriate modifications at its expense. If the modifications are made by ATW at its expense, the Term for the Cars will be extended, at existing rental rates, by the number of days, rounded to the nearest whole, obtained by dividing the ATW's total charges for performing the modification by the proportional daily rate for the Cars.

20. Capital Expenditures and Depreciation. Capital expenditures have been required to be made to the Cars prior to the Cars being accepted by CSX under the ATW/CSX Lease. The letter agreement for those capital expenditures, dated January 17, 1994, between IIC, ATW and Washington Railcar, Inc., is attached as Schedule B. By execution of this Lease, IIC and ATW agree that IIC shall have the sole right to take all depreciation for the Cars, including depreciation for all capital expenditures made to the Cars for delivery to CSX under the ATW/CSX Lease.

21. Notices. Unless otherwise provided, any notice sent pursuant to this Lease must be in writing sent by 1st Class U.S. Mail or confirmed telefax and addressed as follows:

To IIC: Industrial Investment Corporation
P. O. Box 706
Galion, Ohio 44833

To ATW: Atlantic & Western Railway,
Limited Partnership
Attn: K. Earl Durden
2605 Thomas Drive
Panama City Beach, Florida 32408

Either party may change its address upon notice to the other party.

22. Non-Waiver. The failure of either party to enforce any provisions of this Lease or to prosecute any default shall not be considered as a waiver of that provision or as a bar to the prosecution of that default unless so indicated in writing.

23. Insurance. The ATW will at all times during the term of this Lease, and until return of the Cars to IIC, at its own expense, or if the Cars are subleased to CSX, at CSX' expense, cause to be carried and maintained insurance or self-insurance retention in respect to its obligations assumed under this Lease in amounts and against such risks customarily insured against by comparable railroad companies. ATW will annually furnish IIC with a schedule of such coverage, upon written request.

24. UMLER. ATW or, if the Cars are subleased to CSX, CSX will be shown as the Lessee of the Cars in the AAR UMLER file.

25. Casualty Statement. The amounts contained in the attached casualty schedule will apply when ATW is responsible for the payment of a Car that is destroyed or damaged beyond economic repair, as described in Destruction of Car paragraph.

26. Entire Understanding. This Lease constitutes the entire understanding of the parties, has been drafted on a basis of mutual input, shall be construed pursuant to the laws of the State of Florida, and shall be binding upon the parties, their respective successors, assigns and legal representatives. It shall remain in full force and effect until all Cars have been tendered at the appropriate interchange point for return to IIC. Any modification to this Lease must be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized officials.

ATLANTIC & WESTERN RAILWAY, LIMITED PARTNERSHIP,
BY RAIL MANAGEMENT AND CONSULTING CORPORATION.
ITS GENERAL PARTNER, (ATW),

By: 

K. Earl Durden, President

INDUSTRIAL INVESTMENT CORPORATION, (IIC),

By: 

Philip S. Hesby, President

SCHEDULE OF BOXCARS UNDER LEASE
FROM INDUSTRIAL INVESTMENT CORPORATION
TO ATLANTIC & WESTERN RAILWAY, LIMITED PARTNERSHIP

40, 70-ton boxcars all having "CSXT" marks and having numbers
134215 through 134254, inclusive.

SCHEDULE OF CASUALTY VALUE

(BASED ON THE VALUE OF \$12,000 FOR EACH CAR,
WHICH INCLUDES THE VALUE OF EACH CAR PLUS IMPROVEMENTS)

<u>After Lease Rental Payment No.</u>	<u>Casualty Value Payable</u>
1.....	95% of \$12,000
2.....	90% of \$12,000
3.....	85% of \$12,000
4.....	80% of \$12,000
5.....	75% of \$12,000
6 and thereafter.....	70% of \$12,000

I, the undersigned authority in and for said County and State,
hereby certify that K. Earl Darden'

Given under my hand and official seal this 19 day of April, 1994.

Notary Public



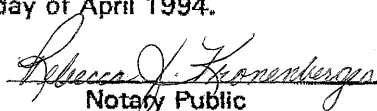
DAVID SCOTT HELMS
My Commission CC326324
Expires Oct. 25, 1997
Bonded by HAI
800-422-1555

STATE OF OHIO)
CRAWFORD COUNTY) SS

On this 19th day of April, 1994, before me personally appeared PHILIP S. HESBY, to me personally known, who being by my duly sworn, says that he is the President of Industrial Investment Corporation, the Lessor named in the foregoing Lease, that said Lease was signed on behalf of Industrial Investment Corporation by him as President, and he acknowledged that the execution of the foregoing Lease was his free act and deed and the free act and deed of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal at Galion, Ohio this 19th day of April 1994.

REBECCA J. KRONENBERGER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 4/28/95


Notary Public